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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,052	10/31/2003	Tarun K. Arora	PPC-5026-US-NP	1208
27777 7590 04/28/2009 PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
04/28/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/699,052

Applicant(s)

ARORA ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. In view of the appeal brief filed on January 26, 2009, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761

Response to Arguments

2. Applicant's arguments, see Appeal Brief, filed November 19, 2008 with respect to the rejection(s) of claim(s) 31-37 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration,

a new ground(s) of rejection is made in view of a different interpretation of the previously applied Carlucci and Luizzi references.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 31-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luizzi (EP 1,013,291 A2) in view of Carlucci (U.S. Patent Application Publication No. 2003/0065299).

With respect to **claim 31**: Applicant has not clearly and explicitly defined the phrase "substantially transparent", therefore the claim is given its broadest reasonable interpretation. Luizzi discloses an absorbent article comprising the following: a body-faceable, liquid-permeable cover layer in the form of cover layer 10 (¶0022); a liquid-impermeable barrier layer in the form of barrier layer 20 (¶0022); a substantially transparent liquid absorbing absorbent system in the form of a layer of liquid-absorbing hot melt adhesive 40 arranged between said cover layer 10 and said barrier layer 20 (Fig. 1, ¶0022), wherein said absorbent system 40 is substantially free of cellulosic material inasmuch as the system comprises a mixture of a hot melt adhesive made of non-cellulosic material and non-cellulosic liquid-absorbing polymer. ('291, ¶¶0013-0017)

Luizzi does not explicitly disclose that the cover layer 10, barrier layer 20 or absorbing system 40 are substantially transparent. Carlucci discloses a transparent absorbent article having a substantially transparent body-faceable, liquid-permeable cover layer in the form of a topsheet, a substantially transparent, liquid-impermeable barrier layer in the form of a backsheet, and a substantially transparent liquid absorbing absorbent system in the form of an

absorbent core arranged between said cover layer and said barrier layer. ('299, ¶¶0016,0024,0027) Carlucci discloses that the transparent article is not easily visually detected during wear, providing a discreet article. Therefore, it would be obvious to one of ordinary skill in the art to modify the article of Luizzi such that the cover layer, barrier layer and absorbent system are transparent as disclosed by Carlucci such that the article is not easily visually detected and thus more discreet.

With respect to **claim 32**: The absorbent system disclosed by Luizzi consists essentially of a substantially transparent liquid absorbing coating consisting essentially of said holt melt adhesive (in the collective form of block copolymer, tackifying resin, plasticizer and antioxidant) and said liquid-absorbing polymer. (¶0014)

5. Claims 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luizzi (EP 1,013,291 A2) in view of Carlucci (U.S. Patent Application Publication No. 2003/0065299) as applied to claim 31 above, and further in view of Grondin et al (U.S. Patent No. 6,103,954).

With respect to **claim 33**: Luizzi does not disclose a separating layer between the topsheet and absorbent layer. Carlucci discloses a separating layer in the form of a primary distribution layer that underlies the topsheet ('299, ¶ 0031) but does not disclose that the separating layer has fibers of a denier that is within the claimed range. Grondin discloses an absorbent article of a substantially identical structure to that of Luizzi, with an additional separating layer between the cover layer 10 and core 14 in the form of a liquid acquisition layer 12. Grondin discloses that such layers are known in the art and are used to effect more uniform distribution of liquid so that one section of the core does not become overwhelmed, slowing or stopping absorption of fluid,

which can cause a wet feeling against the user's skin. ('954, Col. 1, lines 33-42) Grondin discloses that the fibers in the separating layer 12 or of a denier between 3-15 dpf, which overlaps the claimed range. ('954, Col. 2, lines 15-19) Thus, it would be obvious to one of ordinary skill in the art to modify the article of Luizzi so as to comprise a separating layer arranged between the cover layer and absorbent system as disclosed by Grondin to provide a means for more uniform distribution and handling of fluid insult.

With respect to **claim 34**: The absorbent article according to claim 33, wherein said substantially transparent separating layer is free of fibrous material.

With respect to **claim 35**: The liquid-absorbing polymer disclosed by Luizzi comprises an acrylamide-based hydrogel, which is a superabsorbent polymer.

With respect to **claim 36**: Luizzi does not disclose that the article has a light transmittance of greater than about 45%. Carlucci discloses a transparent absorbent article and teaches that the light transmittance of the article is greater than 40%. ('299, ¶ 0015) The motivation to modify the article of Luizzi such that the article is transparent as disclosed by Carlucci is stated *supra* with respect to claim 31.

With respect to **claim 37**: Luizzi does not disclose a separating layer between the topsheet and absorbent layer. Carlucci discloses a separating layer in the form of a primary distribution layer that underlies the topsheet ('299, ¶ 0031) but does not disclose that the separating layer has fibers of a denier that is within the claimed range. Grondin discloses an absorbent article of a substantially identical structure to that of Luizzi, with an additional separating layer between the

cover layer 10 and core 14 in the form of a liquid acquisition layer 12. Grondin discloses that the fibers in the separating layer 12 or of a denier between 3-15 dpf, which overlaps the claimed range. ('954, Col. 2, lines 15-19) The motivation to modify the article of Luizzi so as to have a separating layer arranged between the cover layer and absorbent system is stated *supra* with respect to claim 33.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

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/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761